

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.870 of 2007

Commissioner of Income-tax,
Coimbatore.

..Appellant

Vs.

K.M.Pachayappan

..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai in I.T.A. No.228/Mds/2002 dated 28.10.2005 for the assessment year 1997-98 against the order of the Commissioner of Income Tax [Appeals] I Coimbatore dated 11.12.2001 in ITA.Nos.282 and 283 / 01-02 for the Assessment Year 1996-97 and 1997-98 respectively against the Order of the Income Tax Officer, Ward I[5] Erode dated 20.2.2001 and made in PAN/GIR No.P.5028.

For Appellant : Mr.T.Ravi Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai in I.T.A. No.228/Mds/2002 dated 28.10.2005, raising the following substantial questions of law:-

"1. Whether on the facts and circumstances of the case, the Tribunal was right in law in not considering the Explanation 2 to Section 147 which provides that the assessing officer can reopen the assessments even if the assessments have not been completed under Section 143 and only intimation had been sent, if the conditions laid under Section 147 are fulfilled?

2. Whether on the facts and circumstances of the case, the Tribunal is right in not considering that the addition of incentive bonus to the total income is proper or not in view of the decision of the Madras High Court reported in the case of CIT Vs. E.A.Rajendran reported in 235 ITR 514 in which it has been held that no deduction except what has been allowed under Section 16 is admissible?"

2. The facts leading to the above substantial questions of law are as under:-

The assessee is a Development Officer in M/s.Life Insurance Corporation of India, Gobichettipalayam Branch. The assessee filed his Return of income for the said assessment year on 30.03.1999 declaring a total income of Rs.3,94,820/-. The Return was processed under Section 143 (1) of the Income-tax Act ("Act" in short) on 15.03.2000. The assessee has received additional conveyance allowance of Rs.1,66,957/- and claimed the entire additional conveyance exempt under Section 10(14) of the Act. The assessee has also received incentive bonus of Rs.5,46,721/- and claimed expenditure to the tune of Rs.2,61,849/- against that income. Later, the Assessing Officer issued notice under Section 148 of the Act on the ground that the income has escaped assessment. The assessee replied to the notice issued under Section 148 and contended that the Assessing Officer has no jurisdiction to initiate reassessment proceedings when the Return is pending. However, the Assessing Officer rejecting the contention of the assessee, completed the assessment under Section 143(3) r/w 147 of the Act. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal and confirmed the order of the C.I.T.(A). Hence the present appeal by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Assessing Officer has the power to reopen the assessments once the conditions are satisfied for the purpose of reopening the assessment under Section 147. It is also further submitted that the Assessing Officer had recorded his reasons for reopening the assessment and the present case is covered by Explanation 2 of Section 147 which would clearly empower the assessment officer to pass orders.

4. Heard the counsel. In this case, Return of income was filed under Section 139(4) of the Act on 15.03.2000 and notice under Section 143 (2) for framing assessment under Section 143(3) could have been issued upto 31.03.2000. Therefore, a valid Return of income was pending as on 15.03.2000. The Assessing Officer issued notice under Section 148 on 15.03.2000 when a valid Return under Section 139(4) was pending. In this case the Return was filed and the same is pending, which means that the proceeding is still pending. In such a situation, the Revenue could not have issued notice for the purpose of reopening under Section 147 of the

Act. In the case of Trustees Of H.E.H. The Nizam's Supplemental Family Trust Vs. Commissioner of Income-tax [2000] 242 ITR 381 (SC), the Supreme Court considered the scope of reopening the assessment and held as follows:-

"It is settled law that unless the return of income already filed is disposed of, notice for reassessment under section 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated. According to the Revenue it is immaterial whether the order is communicated or not and the only bar to the reassessment proceedings is that proceedings on the return already filed should have been terminated."

".... A mere glance at this note would show that it could not be said that the Income-tax Officer gave finality to the refund since no refund is granted either in the hands of the trust or in the hands of the beneficiaries. It is an inconclusive note where the Income-tax Officer left the matter at the stage of consideration even with regard to refund in the hands of the beneficiaries. This note was also not communicated to the trustees. When we examine the note dated November 10, 1965, on the file of 1963-64 nothing flows from that as well. In any case if it is an order, it would be appealable under section 249 of the Act. Since the period of limitation starts from the date of intimation of such an order, it is imperative that such an order be communicated to the assessee. Had the Income-tax Officer passed any final order, it would have been communicated to the assessee within a reasonable period. In any case, what we find is that the note dated November 10, 1965, is merely an internal endorsement on the file without there being an indication if the refund application has been finally rejected. By merely recording that in his opinion, no credit for tax deducted at source is to be allowed, the Income-tax Officer cannot be said to have closed the proceedings finally. The decisions referred to by the Revenue are of no help in the present case. We are, thus, of the opinion that during the pendency of the return filed under section 139 of the Act along with the refund application under section 237 of the Act, action could not have been taken under section 147/148 of the Act. Our answer to the question, therefore, is in the negative, i.e., against the Revenue."

In the case of KLM Royal Dutch Airlines Vs. Assistant Director of Income-tax [2007] 292 ITR 49 (Delhi), the Delhi High Court, following the above Supreme Court judgment, considered the scope of provision of Sections 139 and 147 of the Act and held as follows:-

"Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no "fresh evidence or material" could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under section 143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to section 147, provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned, we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law."

Applying the principles enunciated in the judgments of the Supreme Court as well as the Delhi High Court, cited supra, the Tribunal is right in coming to a conclusion that no action could be initiated under Section 147 of the Act, when there is a pendency of the Return before the Assessing Officer. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial questions of law arise for consideration of this Court and accordingly the tax case is dismissed. No costs.

Sd/-

Asst. Registrar.

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Sub Asst. Registrar.

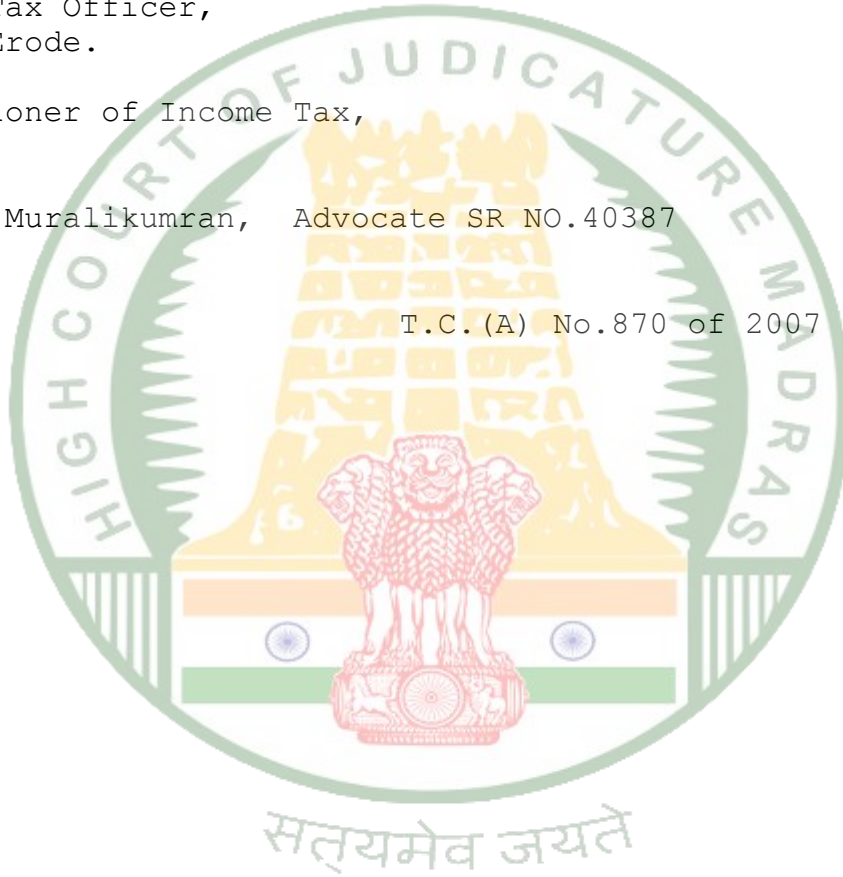
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To

1. The Assistant Registrar,
Income-tax Appellate Tribunal, 'D' Bench,
Rajaji Bhavan, Shastri Nagar,
Chennai.
2. The Commissioner of Income-tax (Appeals) I,
Coimbatore.
3. The Income Tax Officer,
Ward-I(5), Erode.
4. The Commissioner of Income Tax,
Coimbatore.
- + 1 CC To Mr.N.Muralikumran, Advocate SR NO.40387

T.C.(A) No.870 of 2007

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